

**United States Court of Appeals**

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

May 13, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-20081      Ross Dress for Less v. ML Devel  
USDC No. 4:20-CV-978

The court has granted the motion to supplement or correct the record in this case. The originating court is requested to add the attached motion and documents to their court's docket and to provide us with a supplemental electronic record. Counsel is reminded that any citations to these documents must cite to the supplemental electronic record.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
FILED

**MAY 13 2021**

NATHAN OCHSNER  
CLERK OF COURT

Sincerely,

LYLE W. CAYCE, Clerk

*Christina Rachal*

By: \_\_\_\_\_  
Christina C. Rachal, Deputy Clerk  
504-310-7651

Mr. Paul Richard Genender  
Ms. Misty Annette Hataway-Cone'  
Mr. Nathan Ochsner  
Mr. Zachary Tripp  
Mr. Nathaniel David White

No. 21-20081

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**United States Court of Appeals**  
*for the*  
**Fifth Circuit**

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ROSS DRESS FOR LESS, INC.,

*Plaintiff-Appellant,*

v.

ML DEVELOPMENT LP,

*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION, NO. 4:20-CV-978  
HONORABLE LEE H. ROSENTHAL, CHIEF JUDGE

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**PLAINTIFF-APPELLANT'S MOTION TO SUPPLEMENT  
THE RECORD ON APPEAL**

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767 Fifth Avenue  
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(212) 310-8000

*Counsel for Plaintiff-Appellant*

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Pursuant to Federal Rule of Appellate Procedure 27, Appellant Ross Dress for Less, Inc. respectfully moves to supplement the record on appeal with two additional documents concerning jurisdiction. On March 2, 2021, this Court asked the parties to “brief whether complete diversity exists amongst the parties to this appeal.” Briefing Notice, Mar. 2, 2021, ECF No. 00515763016. This Court may take judicial notice of “public filings with state agencies” that are relevant to the jurisdictional inquiry. *See Midcap Media Fin., LLC v. Pathway Data, Inc.*, 929 F.3d 310, 315 (5th Cir. 2019) (citing FED. R. EVID. 201(b)).

As an unincorporated entity, Appellee ML Dev LP’s citizenship is based on the citizenship of each of its partners. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1079-80 (5th Cir. 2008). ML Dev’s partners have publicly filed two documents with the Texas Secretary of State that would assist this Court in its jurisdictional inquiry. The first document is Window Dev GP LLC’s Texas Franchise Tax Public Information Report, a true and correct copy of which is attached as Exhibit A. The second document is the Magness Family Partnership LP’s Texas Franchise Tax Public Information Report, a true and correct copy of which is attached as Exhibit B. Ross obtained these documents from the Secretary of State Online Access system.

Ross has contacted ML Dev's counsel, and ML Dev does not oppose this motion.

For the foregoing reasons, Ross respectfully requests that this Court supplement the record on appeal with the documents attached hereto.

May 12, 2021

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Respectfully submitted,

By: /s/ Zachary D. Tripp  
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*Counsel for Ross Dress for Less, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of May, 2021, the foregoing motion was electronically filed with the Clerk of the Court by using the CM/ECF system. I further certify that all parties are registered CM/ECF users and that service will be accomplished through the CM/ECF system.

/s/ Zachary D. Tripp  
Zachary D. Tripp

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of FED. R. APP. P. 27(d)(2)(A) because it contains 252 words. This motion also complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point font.

May 12, 2021

/s/ Zachary D. Tripp  
Zachary D. Tripp  
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Washington, DC 20036  
(202) 682-7000  
zack.tripp@weil.com

*Counsel for Ross Dress for Less, Inc.*

# **EXHIBIT A**

05-102  
(Rev. 9-15/33)**Texas Franchise Tax Public Information Report**To be filed by Corporations, Limited Liability Companies (LLC), Limited Partnerships (LP),  
Professional Associations (PA) and Financial Institutions

■ Tcode 13196 Franchise

■ Taxpayer number

3 2 0 3 3 9 0 9 7 3 3

■ Report year

2 0 1 8

You have certain rights under Chapter 552 and 559,  
Government Code, to review, request and correct information  
we have on file about you. Contact us at 1-800-252-1381.

Taxpayer name

WINDOW DEV GP LLC

● Blacken circle if the mailing address has changed.

Mailing address

5810 DIEMER RD

Secretary of State (SOS) file number or  
Comptroller file number

City

BROOKSHIRE

State

TX

ZIP code plus 4

77423

800882370

○ Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office

2310 BAKER RD HOUSTON, TX 77094

Principal place of business

2310 BAKER RD HOUSTON, TX 77094

You must report officer, director, member, general partner and manager information as of the date you complete this report.

**Please sign below!**

This report must be signed to satisfy franchise tax requirements.

**SECTION A** Name, title and mailing address of each officer, director, member, general partner or manager.

3203390973318

Name <b>MIKE MAGNESS</b>	Title <b>MM</b>	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address <b>2310 BAKER RD</b>	City <b>HOUSTON</b>	State <b>TX</b>	ZIP Code <b>77094</b>
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP Code
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP Code

**SECTION B** Enter information for each corporation, LLC, LP, PA or financial institution, if any, in which this entity owns an interest of 10 percent or more.

Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership

**SECTION C** Enter information for each corporation, LLC, LP, PA or financial institution, if any, that owns an interest of 10 percent or more in this entity.

Name of owned (parent) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
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Registered agent and registered office currently on file (see instructions if you need to make changes)

Agent: **MIKE MAGNESS**

You must make a filing with the Secretary of State to change registered agent, registered office or general partner information.

Office: <b>2310 BAKER RD</b>	City <b>HOUSTON</b>	State <b>TX</b>	ZIP Code <b>77094</b>
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The information on this form is required by Section 171.203 of the Tax Code for each corporation, LLC, LP, PA or financial institution that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director, member, general partner or manager and who is not currently employed by this or a related corporation, LLC, LP, PA or financial institution.

sign here	Title <b>MM</b>	Date <b>2-1-18</b>	Area code and phone number <b>(281) 802-9414</b>
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Texas Comptroller Official Use Only

VE/DE

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PIR IND

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## **EXHIBIT B**

05-102  
(Rev.9-15/33)

## Texas Franchise Tax Public Information Report

To be filed by Corporations, Limited Liability Companies (LLC), Limited Partnerships (LP),  
Professional Associations (PA) and Financial Institutions

Tcode 13196 Franchise

Taxpayer number

3 2 0 3 5 5 0 6 4 0 4

Report year

2 0 1 9

You have certain rights under Chapter 552 and 559,  
Government Code, to review, request and correct information  
we have on file about you. Contact us at 1-800-252-1381.

Taxpayer name <b>MAGNESS FAMILY PARTNERSHIP LP</b>		<input type="checkbox"/> Blacken circle if the mailing address has changed.	
Mailing address <b>2310 BAKER RD</b>		Secretary of State (SOS) file number or Comptroller file number <b>0800414353</b>	
City <b>HOUSTON</b>	State <b>TX</b>	ZIP code plus 4 <b>77094</b>	

☐ Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office <b>2310 BAKER RD, HOUSTON, TX, 77094 3119</b>
Principal place of business <b>2310 BAKER RD, HOUSTON, TX, 77094 3119</b>



1000000000015

You must report officer, director, member, general partner and manager information as of the date you complete this report.

**Please sign below!** This report must be signed to satisfy franchise tax requirements.**SECTION A** Name, title and mailing address of each officer, director, member, general partner or manager.

Name <b>JULIE A MAGNESS</b>	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address <b>5810 DIEMER RD</b>	City <b>BROOKSHIRE</b>	State <b>TX</b>	ZIP Code <b>77423</b>
Name <b>MICHAEL B MAGNESS</b>	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address <b>5810 DIEMER RD</b>	City <b>BROOKSHIRE</b>	State <b>TX</b>	ZIP Code <b>77423</b>
Name <b>JULIE A MAGNESS</b>	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address <b>5810 DIEMER RD</b>	City <b>BROOKSHIRE</b>	State <b>TX</b>	ZIP Code <b>77423</b>

**SECTION B** Enter information for each corporation, LLC, LP, PA or financial institution, if any, in which this entity owns an interest of 10 percent or more.

Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership

**SECTION C** Enter information for each corporation, LLC, LP, PA or financial institution, if any, that owns an interest of 10 percent or more in this entity.

Name of owned (parent) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
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Registered agent and registered office currently on file (see instructions if you need to make changes)

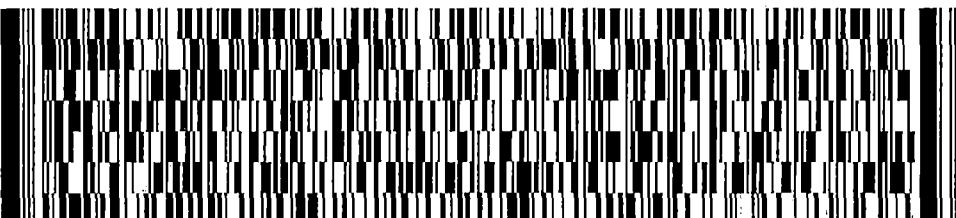
Agent: **MIKE MAGNESS**You must make a filing with the Secretary of State to change registered  
agent, registered office or general partner information.

Office: <b>2310 BAKER RD</b>	City <b>HOUSTON</b>	State <b>TX</b>	ZIP Code <b>77094</b>
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The information on this form is required by Section 171.203 of the Tax Code for each corporation, LLC, LP, PA or financial institution that files a Texas Franchise Tax Report. Use additional  
sheets for Sections A, B and C, if necessary. The information will be available for public inspection.I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has  
been mailed to each person named in this report who is an officer, director, member, general partner or manager and who is not currently employed by this or a related corporation,  
LLC, LP, PA or financial institution.

sign here <b>MIKE MAGNESS</b>	Title <b>GENL PARTNER</b>	Date <b>09/10/2019</b>	Area code and phone number <b>( 281 ) 802 - 9417</b>
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## Texas Comptroller Official Use Only



VE/DE <input type="radio"/>	PIR IND <input type="radio"/>
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Comptroller  
of Public  
Accounts  
FORM05-102  
(Rev.9-15/33)**Texas Franchise Tax Public Information Report**To be filed by Corporations, Limited Liability Companies (LLC), Limited Partnerships (LP),  
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■ Tcode 13196 Franchise

■ Taxpayer number

3 2 0 3 5 5 0 6 4 0 4

■ Report year

2 0 1 9

You have certain rights under Chapter 552 and 559,  
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we have on file about you. Contact us at 1-800-252-1381.

Taxpayer name <b>MAGNESS FAMILY PARTNERSHIP LP</b>		<input type="checkbox"/> Blacken circle if the mailing address has changed.	
Mailing address <b>2310 BAKER RD</b>		Secretary of State (SOS) file number or Comptroller file number	
City <b>HOUSTON</b>	State <b>TX</b>	ZIP code plus 4 <b>77094</b>	<b>0800414353</b>

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Principal office <b>2310 BAKER RD, HOUSTON, TX, 77094 3119</b>
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1000000000015

**Please sign below!****This report must be signed to satisfy franchise tax requirements.****SECTION A** Name, title and mailing address of each officer, director, member, general partner or manager.

Name <b>MICHAEL B MAGNESS</b>	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address <b>5810 DIEMER RD</b>	City <b>BROOKSHIRE</b>	State <b>TX</b>	ZIP Code <b>77423</b>
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP Code
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP Code

**SECTION B** Enter information for each corporation, LLC, LP, PA or financial institution, if any, in which this entity owns an interest of 10 percent or more.

Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership

**SECTION C** Enter information for each corporation, LLC, LP, PA or financial institution, if any, that owns an interest of 10 percent or more in this entity.

Name of owned (parent) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
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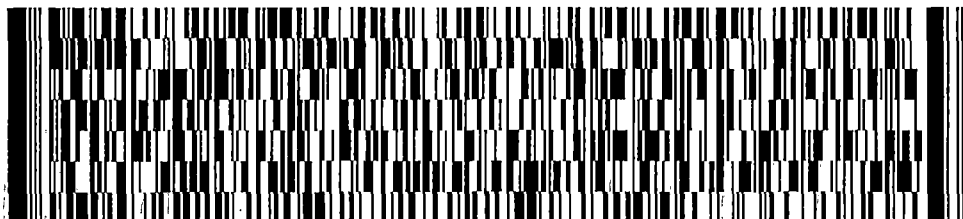
Registered agent and registered office currently on file (see instructions if you need to make changes)

Agent: **MIKE MAGNESS**You must make a filing with the Secretary of State to change registered  
agent, registered office or general partner information.

Office: <b>2310 BAKER RD</b>	City <b>HOUSTON</b>	State <b>TX</b>	ZIP Code <b>77094</b>
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sign here	<b>MIKE MAGNESS</b>	Title <b>GENL PARTNER</b>	Date <b>09/10/2019</b>	Area code and phone number <b>( 281 ) 802 - 9417</b>
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VE/DE	<input type="radio"/>	PIR IND	<input type="radio"/>
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